

# **EXHIBIT B**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
Annual Assessment of the Status of Competition ) MB Docket No. 07-269  
in the Market for the Delivery of Video )  
Programming )

**REPLY COMMENTS OF MONTGOMERY COUNTY, MARYLAND**

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## SUMMARY

The Commission's actions in recent years have implicitly assumed that the presence of more than one provider in a marketplace is enough to create a fully competitive marketplace. The experience of citizens residing in Montgomery County, Maryland is that choice is not the same as competition. The Commission must act, or in the alternative, call upon the Congress to change the Cable Act where necessary to protect consumers as market forces alone have proved inadequate.

The Commission is required to provide an annual report to Congress on the status of competition in the market for delivery of video program. The County agrees with the comments of Public Knowledge that this report should be more robust rather than a simple catalogue of industry data. The County, alone and as part of a coalition, has filed comments and supplemental comments in this proceeding over the years providing detailed information about the consumer impact of cable rate and service increases, local programming statistics, and additional consumer issues. Yet despite receiving hundreds of comments, a statutory requirement to provide **annual** reports to Congress, and the collection of nearly \$60 million in annual federal regulatory fees from cable subscribers, the Commission has neither complied with the letter of the law to provide annual reports, nor the spirit of the law to provide information that would improve consumers' ability to reap the benefits of actual competition for the delivery of video programming.

The Commission is again requesting information that takes considerable time, effort and resources to compile. The County respectfully requests that the Commission fulfill its statutory obligation and publish a report of developments between 2007 and 2010 to bring itself current and thereafter release annual reports which provide useful information about how to improve

competitive video services for consumers. To support the Commission's efforts, Montgomery County hereby presents further information in this reply round to:

1. Update the County's prior filings to include 2010 cable rate and equipment data.
2. Note that the Commission is failing Congress by not highlighting that cable rates are rising and consumer satisfaction is falling despite what has been a more than doubling of the number of communities considered subject to effective competition, and respectfully request that the Commission fulfill its **statutory** obligation to provide annual cable pricing information and begin to include costs for equivalent DBS and on-line video services (including broadband connection fees).
3. Call to the Commission's attention that the fact that Congress and consumers would be better served by the annual reports if the Commission:
  - a. Included consumer satisfaction questions and customer surveys as part of a *Status of Competition* report;
  - b. Improved its vastly outdated cable consumer protection standards and undertook exploratory proceedings to develop on-line video distribution consumer standards; and
  - c. Mandated the sale of navigational equipment or make clear that such a requirements imposed by state law would not be preempted.
4. Recognize that channels, channel capacity and program guides being set aside for public interest programming are not keeping pace with assets dedicated to non-public interest programming.
5. Note that there were no complaints regarding local franchising.

6. Welcome On-Line Video Distribution (OVD) but also point out that absent action to permit local franchising authorities to protect on-line subscribers, there will be no consumer protection for OVD subscribers.
7. Welcome new entrants like Digital Broadcasting OVS, but call on the Commission to make clear there are OVS obligations that are not negotiable.
8. Encourage the Commission to use its annual reports to Congress to advocate for consumer protection standards, not merely engage in a data collection and reporting exercise to Congress.
9. Recognize that channels, channel capacity and program guides being set aside for public interest programming are not keeping pace with assets dedicated to commercial programming.

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**REPLY COMMENTS OF MONTGOMERY COUNTY, MARYLAND**

**I.     INTRODUCTION**

Montgomery County, Maryland (“County”), by its counsel, files these reply comments in response to the Commission’s Notice of Inquiry (the “NOI”),<sup>1</sup> and Further Notice of Inquiry (the “FNOI”)<sup>2</sup> in the above captioned proceeding to urge the Commission to re-examine the premises underlying its analysis of video competition issues and share with Congress the evidence that merely having a choice of cable providers is not a guarantee of a fully competitive video marketplace that offers competitive cable rates.<sup>3</sup> Furthermore, the County urges the Commission to report to Congress, based on the cable evidence, that mere choice of DBS and on-line video service delivery will not alone ensure a competitive market for delivery of video services that benefits consumers. Implicit in the Commission’s actions in recent years is the assumption that choice equals competition which equals consumer protection. The experience of citizens

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<sup>1</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket 07-269 (rel. Jan. 16, 2009) (“NOI”).

<sup>2</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Further Notice of Inquiry, MB Docket 07-269 (rel. April 21, 2011)(“FNOI”).

<sup>3</sup> Montgomery County, as well as the New Jersey Ratepayer and others make powerful cases for why better regulation is needed. Comments of Comcast and NCTA calling on the Commission to recommend that Congress further *deregulate* the cable industry make imperative the need for a Commission declaration that current market place protections and limited rate regulation are not protecting consumers.



residing in the County is that choice is not the same as competition and does not offer adequate consumer protection.<sup>4</sup> The Commission should act, or in the alternative, call upon Congress to change the Cable Act where necessary to protect consumers as market forces alone have proved inadequate to do so.<sup>5</sup> The Commission's actions or threats of action to preempt state and local efforts at self-help have been equally harmful to consumers.<sup>6</sup>

The County, alone, and as part of a coalition, has been an active participant in this proceeding over the years. The County joined the counties of Anne Arundel, Maryland, and Fairfax, Virginia, and the cities of Laredo, Texas and Boston, Massachusetts in filing comments in June of this year. Two years ago, the County filed comments including rate surveys when the Commission first sought to update its *14th Report* to Congress.<sup>7</sup> The County also called up the

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<sup>4</sup> The County submits data on prices in the County to emphasize two points: first, the rates paid by subscribers for cable service continue to increase even in the face of competition; and second, those rates must be considered together with the very high rates that operators charge for equipment needed to obtain the service. Viewing the first in isolation from the second does not actually reflect the effect on consumers, and the effect of high equipment rates is exacerbated by the fact that consumers have no competitive alternatives for acquiring such equipment.

<sup>5</sup> In fact, the Commission's own statistics demonstrate the perverse competitive situation under the current regulatory/deregulatory scheme. In its most recent annual cable rate assessment provided to the Congress, the Commission revealed that cable rates grew faster in communities under the alleged protection of a competitive marketplace than in those communities protected by rate regulation: "Over the year ending January 1, 2009, the average price of expanded basic service increased by 5.7 percent, to \$52.10, for those operators serving communities for which no effective competition finding was made ("noncompetitive communities"). The average price increased by 6.6 percent, to \$52.96, for the group of operators the Commission has found to face effective competition." Yet in none of its reports to Congress of which the County is aware has the FCC called on the Congress to change the definition of effective competition. *In the Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, MM Docket No. 92-266, (rel. Feb. 14, 2011) at 3 ("2011 Rate Report").

<sup>6</sup> For a fuller discussion on this point see *In the Matter of Video Device Competition Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Inquiry, 25 FCC Rcd 4275 (2010) ("NOI"), Reply Comments of Montgomery County, (Aug. 12, 2010).

<sup>7</sup> A copy of the latter comments, *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 07-269, Comments of Montgomery County, MD (May 20, 2009) ("2009 Comments"), is attached hereto. The County refiles its 2009 Comments together with

Commission to either mandate that cable operators make equipment available for purchase or confirm that such action by a State would not be preempted by the Commission.<sup>8</sup> However, the Commission did not provide an annual report using data that was submitted in response to its last call for video competition data, and the last report released by the Commission contains data only through 2006.

It takes substantial time, effort and resources to respond to the Commission's annual call for comments on these important matters. The County respectfully requests that the Commission fulfill its statutory obligation and publish a report of developments between 2007 and 2011 to bring itself current, thereafter release annual reports which provide useful information about how to improve competitive video services for consumers, and support the effort of State and local governments to promote a competitive market for cable equipment.

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these Reply Comments because the report to Congress that these comments were submitted to support has yet to be made. The County further notes that the data submitted in these materials is more current than the cable rate data that the Commission shared with the Congress in February of 2011.

<sup>8</sup> For a fuller discussion on this point *see supra*, note 6. Specifically, the County has worked with its state legislative delegation to seek state remedies such as mandated sale option for subscriber equipment as a means to address escalating equipment charges, only to have such efforts thwarted by the delay or refusal of the Commission to declare that such legislation is not preempted.

## II. COMPETITION IS NOT LOWERING PRICES AND THE CURRENT EFFECTIVE COMPETITION STANDARD IS NOT PROTECTING CONSUMERS

### A. Industry Comments Paint an Unrealistic Picture of the Benefits of Competition with Incomplete Data.

The evidence from the Commission,<sup>9</sup> from parties in this proceeding,<sup>10</sup> and from the marketplace itself<sup>11</sup> continues to confirm that competition of second, third or even fourth providers has not resulted in lower video pricing. The Commission asked for data in the FNOI which it would use “to enhance our analysis of competitive conditions, better understand the implications for the American consumer, and provide a solid foundation for Commission policy making with respect to the delivery of video programming to consumers.”<sup>12</sup> In paragraphs 26, 27 and 28 of the FNOI, the Commission posed numerous questions intended to elicit detailed and specific information about the prices that each type of MVPD charges for delivered video programming, and as well as information about pricing strategies.<sup>13</sup>

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<sup>9</sup> See e.g. 2011 Rate Report.

<sup>10</sup> See e.g. City of Boston Comments, New Jersey Division of Rate Counsel Comments, discussed more fully *infra*.

<sup>11</sup> See Table 1, *infra*.

<sup>12</sup> FNOI, ¶. 1.

<sup>13</sup> A few examples of questions the Commission asked are listed below:

- What prices are subscribers paying for MVPD service?
- To what extent do MVPDs use promotional or reduced pricing as a competitive strategy?
- Can consumers easily find the prices of MVPD video packages and services on their monthly bill and/or MVPDs’ web sites and other promotional materials?
- To what extent do providers of MVPD service use a strategy of reducing prices to attract and retain subscribers?
- To what extent do MVPDs offer new subscribers price discounts for an introductory period?
- Do prices change at the end of the introductory period, and, if so, how?
- Are introductory and long-term prices listed and fixed, or do providers negotiate with individual subscribers over prices before and after introductory periods?

Unfortunately, in their comments the industry largely ignored the Commission's detailed questions and gave short, generalized responses on pricing, choosing instead to provide detail on topics such as investment or competitive entry that might create a more positive impression of industry development especially when price trends are left out of the discussion.<sup>14</sup> But these non-responsive industry comments do a disservice to the Commission and consumers as they leave out valuable information that the Commission itself recognized would be needed to fully analyze and understand competitive conditions and the implications for consumers. In so doing, the industry crafts an unduly favorable picture of the state of competition for video programming services. The County strongly urges the Commission to use all legal and regulatory means available to it to require industry to provide the specific data requested by the Commission in the FNOI.

**B. Industry Comments Seek to Conflate Choice with Consumer and Price Safeguards**

The National Cable & Telecommunications Association (NCTA), at pages 7-13, provides several figures and charts on trends in MVPD market share, infrastructure expenditures, MVPD subscriptions, digital penetration, subscriptions to DVR and VOD services – all intended to back the claim that these are “strong indicators of a vibrantly competitive marketplace.” Buried in this discussion is a single paragraph citing three Multichannel News stories on promotional offers and bundling. That is all the information on pricing provided by the cable industry's national

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- Do households that subscribe to the same delivered video services, from the same provider, in the same geographic area, pay different prices?
  - How do bundles of service (*i.e.*, double- or triple-play offerings) change the price of delivered video services?
  - To what extent have MVPDs been adding linear channels and non-linear VOD programming and raising prices as a result?

<sup>14</sup> See discussion *infra*.

trade association. The lack of specific industry information on pricing, even in aggregated form, is unacceptable to the County, and should be unacceptable to the Commission as well.

Individual cable operators are no more forthcoming with actual pricing data. For example, Comcast devotes a single paragraph to this topic, simply stating that operators offer bundling and promotional pricing, and citing comments filed by NCTA in 2009 to support the claim that that bundled prices are much lower.<sup>15</sup> Absolutely no pricing data is provided at all, not even by way of illustration.

Yet as we discuss below, the actual evidence on price trends belies the industry assertion that competition is “vibrant”. While there may indeed be more competitors in the marketplace, when it comes to pricing, competition is clearly not working to benefit consumers.

**C. Non-Industry Commenters Demonstrate that Competition is Not Providing Price Protection**

Some specific pricing trends and practices are provided by non-industry commenters, and the story they tell is not a positive one for consumers. The City of Boston, where rates are deregulated under the “effective competition” standard, provided evidence to demonstrate that an “effective competition” order can lead to excessive rate increases. The City produced a recent survey of area cable rates that demonstrated that despite the presence of a wireline competitor to Comcast for some consumers in Boston and the availability of satellite dish service in the City of Boston, Comcast charges *higher* prices to consumers in Boston for virtually the identical services

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<sup>15</sup> Comcast Comments, p. 18-19.

as it provides to Boston's neighboring communities. These other communities enjoy *lower* rates because they lack competition, and thus are still subject to rate regulation.<sup>16</sup>

The New Jersey Division of Rate Counsel provides a reality check on the true impacts on consumers of the widespread industry practices of offering promotional offers and bundles. In the short run, a consumer will see a price benefit but once signed up, the advantage goes to the operator who has a free hand to raise prices and knows very well that the transaction costs and inconvenience of trying to change providers or services will be very discouraging.<sup>17</sup> Likewise, the County detailed the strong benefits that bundling offers *to providers* in its 2009 Comments (at pages 12-15), and industry has said nothing of substance to challenge the validity of the County's analysis. Furthermore, Fairfax County, Virginia also filed comments in January 2007 noting rising prices between 2004 and 2007 and how difficult it was for consumers to compare bundled information.<sup>18</sup>

**D. Analysis of the True Costs of Cable, Including Service and Equipment, is Made More Difficult By Industry Practices and Lack of Cooperation.**

Compiling cable rate data is hard as reflected by the two examples Montgomery County shares below. The County does not offer these insights as an excuse for the Commission not to discharge its own independent means to establish price studies, but more to share that such research can be done. And as we hope our data tables show, by employing independently

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<sup>16</sup> The experiences in Boston mirror those found by the Commission on a national basis, i.e. that rates are rise faster in markets where prices are established by the marketplace than in communities that have rate regulation. *See* 2011 Rate Report.

<sup>17</sup> New Jersey Division of Rate Counsel Comments, p. 5-6.

<sup>18</sup> Reply Comments of Fairfax County filed January 16, 2007. A copy of this filing is attached hereto as Exhibit 2.

gathered information, not only industry provided data, better and more meaningful insights are achievable.<sup>19</sup>

In the County's experience, marketing information from operators will rarely make adequate disclosure of all of the service and equipment options available to consumers. For example, Verizon offers a low cost plan for \$12.99 that includes PEG channels and broadcast channels (including some HD channels), but it is difficult for consumers to learn about that plan by looking at Verizon's main FiOS TV webpage which prominently displays three much more expensive plans (\$64.99, \$74.99, \$89.99 respectively).<sup>20</sup> The only way for a consumer to get information about the \$12.99 plan is if the consumer happens to click on the "See Local Channel Plan" link on this webpage, and then has the patience and service location information to go through multiple steps to determine if this lower cost plan is available in their area. It simply should not be so difficult.

County staff also had difficulties in obtaining price information beyond promotional prices when they contacted the providers by telephone. Customer service representatives are apparently only able to access pricing information with a specific street address; and one was unwilling to provide information without a callback telephone number as well. Cable operators prominently post promotional information on their websites, but rarely post annual rate cards, even though such notices are typically required by regulation to be provided to current

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<sup>19</sup> Montgomery County is not the only party to voice concerns with the Commission's data collection techniques. The General Accounting Office found that there is a "weaknesses in FCC's processes for collecting and using information ...[and that it could] ...raise concerns regarding the transparency and informed nature of FCC's decision-making process." FCC MANAGEMENT: Improvements Needed in Communication, Decision-Making Processes, and Workforce Planning (GAO-10-79) released December 17, 2009 available at <http://www.publicutilityhome.com/docs/d1079.pdf> (last visited July 6, 2011).

<sup>20</sup> <http://www22.verizon.com/residential/fiostv/plans.htm> (last visited July 7, 2011).

subscribers. And such annual rate cards do not contain rate information for all equipment offered by cable operators.

Thus, the problem of cable operators not responding to specific pricing information requests is not limited to Commission proceedings; it is also a problem in the cable operators' communications with current and potential subscribers. Given that the Commission had asked for pricing information to be provided in this proceeding, and that the operators declined to do so despite the fact that all of this pricing information is readily available to them, the County urges the Commission to use all available legal and regulatory means available to it to require that all MVPDs provide the information requested by the Commission.<sup>21</sup> In the absence of specific information provided by the MVPDs, the County suggests that the Commission make use of the information we have provided herein in its report to Congress.

**E. Rates for Cable Service Continue To Increase Unchecked.**

Data on pricing of cable services in Montgomery County is discussed in this section, and the data on pricing of equipment is discussed in the next. The County submits this data to the Commission to provide factual information regarding the actual consumer price benefits to consumers from competition, or lack thereof, and to counter industry comments that competition is unquestionably working for the benefit of consumers. The County emphasizes two points about the allegedly "vibrant" competitive marketplace:

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<sup>21</sup> County also notes that it is not the only party to voice concerns with the Commission's data collection techniques. The General Accounting Office found that there is a "weaknesses in FCC's processes for collecting and using information ...[and that it could] ...raise concerns regarding the transparency and informed nature of FCC's decision-making process." FCC MANAGEMENT: Improvements Needed in Communication, Decision-Making Processes, and Workforce Planning (GAO-10-79) released December 17, 2009 available at <http://www.publicutilityhome.com/docs/d1079.pdf> (last visited July 6, 2011).



- Rates paid by subscribers for cable service continue to increase even in the face of competition; and
- The very high rates that operators charge for the digital equipment required to obtain service must be considered with the cost for that service to obtain the real price of the service.

The rates charged by the three wireline providers currently serving Montgomery County residents – Comcast, RCN and Verizon – appear in Table 1. As illustrated in Table 1, the rates paid by subscribers for cable television services continue to increase. Clearly wireline competition does not restrain rates. Competition has not resulted in lower rates in Montgomery County, which has almost 400,000 households, nearly 250,000 cable subscribers among three franchised cable operators, and a high broadband penetration rate. For example, even though Comcast must compete with two wireline providers, Comcast’s rate for basic service in the County increased by over 22% between 2007 and 2011 and its rate for its standard service (a combination of basic and expanded tier service) increased by 14.1%.

**Table 1 – Cable Service Rates in Montgomery County**

	2007	2008	2009	2010	2011	2007-11 % Increase
<b>Comcast</b>						
Basic	\$17.30	\$17.25	\$19.10	\$19.10	\$21.10	22%
Expanded Basic only	\$40.80	\$43.10	\$44.20	\$44.05	\$45.20	11.3%
Combined*	\$58.10	\$60.35	\$63.30	\$63.15	\$66.30	14.1%
<b>RCN</b>						
Basic	n.a.	n.a.	\$17.95	\$22.97	\$22.97	27.9%**
Signature Lineup	\$56.94	\$61.44	\$65.50	\$70.50	\$73.50	29%
<b>Verizon</b>						
Basic	\$12.99	\$12.99	\$12.99	\$12.99	\$12.99	0%
Expanded Basic (includes basic)	\$39.99	\$47.99	\$47.99	\$57.99	\$64.99	62.5%

n.a = price not available.

\* A Comcast customer must subscribe to basic in order to get expanded basic, thus the “combined” price is comparable to Verizon’s expanded basic.

\*\* RCN Basic percentage increase is from 2009-2011.

Table 1 also shows that the competitors do not seem to be affected by competition any more than the incumbent. RCN's rate for its signature lineup has increased by 29% since 2007. And while Verizon has held its basic rate steady since 2007, it has raised its expanded basic rate by a whopping 62.5% in just five years. Indeed, industry pricing behavior in the County has played out much as predicted in the County's 2009 filing in which we stated:

It is reasonable to assume...that Verizon's priority is to gain market share as it rolls out its network, while Comcast and RCN seek to maximize revenue from existing customers. Perhaps at some point in the future prices will converge, with Verizon raising its rates and Comcast's coming down – but at that point it would seem that both companies would have the incentive to maintain comparable prices, and no incentive to reduce them, or even to limit increases to the general rate of inflation. In fact, this kind of pricing behavior is not uncommon in oligopolies. (citations omitted)<sup>22</sup>

The County was optimistic in thinking Comcast's rates would come down, but Comcast's rate increases did (at least temporarily) slow compared to its competitors. And now, in 2011, the once impressive price differential between Verizon and Comcast for expanded basic service has largely evaporated, as Verizon has quickly raised its prices to meet Comcast's.

In the bigger picture, perhaps the most striking thing about these double digit service rate increases in the 2007 to 2011 period is that they have been imposed during a time of deep recession in which the U.S. economy has experienced some of the lowest annual inflation rates since the Great Depression. The CPI increase from 2007 to 2011 was a modest 8.7%.<sup>23</sup> Thus, looking past industry's vague and generalized references to the benefits of promotional rates and bundling, and focusing on the real service rates on offer to consumers, it is clear that consumers

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<sup>22</sup> 2009 Comments, p. 7.

<sup>23</sup> The CPI was derived by comparing the figure for May 2007 to May 2011 in Department of Labor, Bureau of Labor Statistics CPI table available on the internet here: <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt> (accessed July 7, 2011).

in Montgomery County are not seeing a pricing benefit of competition where they could use it most, in their pocket books. And there is no reason, and certainly no industry evidence, to suggest that consumers elsewhere are having a better experience.

**III. THE COMMISSION MUST CONSIDER EQUIPMENT RENTAL COSTS AS PART OF ITS ANALYSIS OF CABLE RATES AND TAKE ACTIONS TO REIGN IN THESE COSTS.**

Montgomery County's experience shows that head-to-head competition is not restraining rates for cable equipment any more than it is holding down monthly service rates. Subscribers in the County are paying substantial amounts to rent equipment, and recent trends suggest subscribers will continue to pay substantial amounts to their service providers for equipment which they can obtain from no other source.

Table 2 contains the rates for cable equipment in Montgomery County for 2007 through 2011. The table shows that monthly rental rates for some of the most popular equipment have increased, while others for less popular equipment have stayed flat or decreased. For example, NCTA data shows that demand for digital tiers and digital services such as DVRs and VOD have increased substantially,<sup>24</sup> and so have the prices for the equipment needed to use these services, as demonstrated in Table 2.

As important as increases in equipment rental prices is the fact that these rental fees add significantly to the total cost of obtaining cable services. As a part of the June 2009 digital broadcast television transition, cable operators were given an incentive to move to all digital systems (as all digital cable systems were relieved of analog channel must-carry obligations).

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<sup>24</sup> NCTA Comments, p. 11-12

Digital cable also provides technical benefits for cable operators and subscribers. But those benefits have come at a very high cost for consumers. Cable operators in Montgomery County encrypt almost all cable channels and subscribers without digital televisions are forced to pay for additional equipment charges – a converter or a digital adapter – on every television in their house. Higher equipment fees are required to use basic features, such as the electronic program guide, or moderately advanced features such as video-on-demand, because low priced adapters offered by cable operators do not provide these types of services. Consequently, as cable operators abandon analog technology, they are simultaneously expanding their captive digital equipment rental market.

This cost increase is particularly dramatic for subscribers who must rent equipment for more than one television set. Comcast estimates that there are 2.8 television sets in the average household.<sup>25</sup> For the large number of subscribers in the County who have more than one television set, paying for a converter on every television set adds substantial amounts to their monthly bills.

**Table 2 – Cable Equipment Rates in Montgomery County**

	2007	2008	2009	2010	2011	2007-11 % increase
<b>Comcast</b>						
Basic only converter	\$0.90	\$1.10	\$1.10	\$4.99	\$3.20	255%
Addressable converter	\$3.75	\$3.70	\$3.40	\$15.99	\$3.20	-17%
DVR converter					\$15.95	
HD converter	\$6.50	\$7.95	\$7.95	\$19.20	\$18.50*	185%
HD- DVR converter					\$15.95^	
Remote control	\$0.20	\$0.25	\$0.25	\$0.25	\$0.25	25%
Cable Card	n.c.	n.c.	n.c.	\$9.25	\$9.25	0%
Digital Adapter	n.a.	n.a.	\$1.99	\$1.99	\$1.99	0%

<sup>25</sup> Comcast's *Montgomery Digital Network Enhancement and "The World of More,"* presentation by Comcast to Montgomery County (June 2009).

	2007	2008	2009	2010	2011	2007-11 % increase
<b>RCN</b>						
Digital converter	\$7.95	n.a.	\$3.95	\$3.95	\$4.95	-38%
Additional converter	\$7.95	n.a.	\$6.95	\$6.95	\$4.95	-38%
DVR converter	\$12.95	n.a.	\$17.95	\$17.95	\$17.95	39%
HD converter	\$9.95	n.a.	\$11.95	\$9.95	\$9.95	0%
HD- DVR converter					\$19.95	
Cable Card	\$1.50	n.a.	\$1.50	\$1.50	\$1.50	0%
Digital Adapter	n.a.	n.a.	\$3.95	\$3.95	No longer offered	
<b>Verizon</b>						
Std Def. Converter	\$4.99	\$4.99	\$5.99	\$5.99	\$5.99	20%
DVR converter					Not available	
HD converter	\$9.99	\$9.99	\$9.99	\$9.99	\$9.99	0%
HD DVR converter	\$12.99	\$15.99	\$15.99	\$15.99	\$15.99	23%
HD Home Media DVR	\$19.99	\$19.99	\$19.99	\$19.99	\$19.99	0%
CableCard	n.a.	n.a.	\$3.99	\$3.99	\$3.99	0%
Digital Adapter	n.a.	n.a.	\$3.99	\$3.99	\$3.99	0%

\*Includes an HD Technology Fee of \$9.25 per month. Comcast representatives were unaware of this charge and did not know if it was applicable regarding other HD equipment.

^Price does not include HD Technology Fee which may also apply.

n.c. = no charge

n.a.= price not available

Table 3 shows the effects of equipment charges on rates for subscribers who pay for service to more than one television set. As noted above, subscribers do have the option of paying lower rates for digital adapters, instead of set-top boxes, but these devices do not provide access to the on-screen program guide or to video-on-demand services.<sup>26</sup> Thus, if a subscriber wants the benefit of the full capability of provider's services, these cheaper devices are not adequate.

<sup>26</sup> Rates for digital adapters appear in Table 2.

**Table 3 – 2011 Rates for Service plus Equipment**

	Service Only	Service + one set		Increase over service only	Service + two sets		Increase over service only	Service + three sets		Increase over service only
Comcast										
Basic only (analog) + converter + remote	21.10	\$23.09		5.2%	\$25.08		10.4%	\$27.07		15.6%
Expanded Basic + Addressable converter + remote	66.30	\$69.75		5.2%	\$73.20		10.4%	\$76.65		15.6%
Expanded basic + HD digital converter + remote	66.30	\$84.80^		27.9%	\$94.05		41.9%	\$103.30		55.8%
RCN										
Basic + digital converter	22.97	\$27.92		21.5%	\$32.87		43.0%	\$37.82		64.6%
Expanded basic + digital converter	73.50	\$78.45		6.7%	\$83.40		13.5%	\$88.35		20.2%
Expanded basic + HD converter	73.50	\$83.45		13.5%	\$93.40		27.0%	\$103.35		40.6%
Verizon										
Basic + standard definition converter	12.99	\$18.98		46.1%	\$24.97		92.2%	\$30.96		138.3%
		HD	HD-DVR		HD	HD-DVR		HD	HD-DVR	
Prime HD service and converter 104 channels	64.99	\$74.98	\$80.98	24.6%*	\$84.97	\$96.97	49.2%*	\$94.96	\$112.96	73.8%*
Extreme HD service & converter 204 channels	74.99	\$84.98	\$90.98	21.3%*	\$94.97	\$106.97	42.6%*	\$104.96	\$122.96	64.0%*
Ultimate HD service & converter 270 channels	89.99	\$99.98	\$105.98	17.8%*	\$109.97	\$121.97	35.5%*	\$119.96	\$137.99	53.3%*

Comcast and Verizon Expanded packages include basic service charge

\*Percentage increase for HD-DVR converter box

^Includes HD Technology Fee (\$9.25)- Comcast customer service representatives were unaware of this charge and did not know if it was applicable regarding other HD equipment.

Table 3 also illustrates the dramatic effects of equipment rates on the amounts subscribers pay, especially in the case of Verizon. A Verizon basic-only subscriber renting a single converter will pay 46.1% more than the basic service price. A Verizon HD subscriber with a DVR pays an extra 17.8 to 24.6%. The effects are even greater for subscribers with multiple televisions: if a Verizon subscriber has three sets and wants a standard converter on all of them,

the subscriber will pay an additional 138.3%. A comparable RCN subscriber would pay an additional 64.6%, and a Comcast subscriber would pay an additional 15.6%. In other words, equipment adds a lot to the rates subscribers pay, and the Commission needs to specifically address this issue in any discussion of competitive video service.

So long as subscribers are captive renters – they can only rent equipment and then only from the operators – and each operator is free to charge whatever rate it chooses for the equipment, subscribers will suffer oligopolistic pricing behavior. But this need not be the case, as the County has urged on numerous occasions; the Commission could mandate a purchase option for subscriber equipment.<sup>27</sup>

Indeed other pricing models available in the communications industry involve a purchase option. Wireline phone subscribers can buy their equipment. Wireless phone subscribers can buy their cell phones, or get them at a reduced price with a longer term service contract with a specific provider. Broadband subscribers can purchase their own cable modem instead of renting one. Satellite subscribers can purchase their own equipment.<sup>28</sup> In fact, in an *ex parte* filing in the *All Vid* proceeding, the cable industry lauded the fact that consumers can buy all sorts of equipment to access video content.<sup>29</sup> But the conclusion drawn from these advances in technology “for sale” is rather astonishing. NCTA stated: “The fact that tens of millions of tablets, game consoles, Internet-connected TVs, and other smart, video-capable devices have

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<sup>27</sup> See footnote 6; see also *In the Matter of Video Device Competition Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Inquiry, 25 FCC Rcd 4275 (2010) (“NOI”), Comments of Montgomery County, Maryland (July 13, 2010).

<sup>28</sup> The County notes that DBS subscribers must purchase equipment and then pay additional “lease” fees of \$5 to \$10 per converter box per month.

<sup>29</sup> Letter from K. McSlarrow to J. Genachowski dated January 26, 2011.

been sold and will be sold means that the Commission no longer needs to “create” a retail market for navigation devices.”<sup>30</sup>

The implication is that because there are alternative devices for sale that allow consumers to access some video content principally over the Internet, a retail market for navigational devices for multichannel video programming services already exists. In that case why is it that cable operators continue to offer only to rent their equipment to consumers? Industry provides no answer, but the County believes Tables 4 and 5 do. Equipment rental is extremely profitable. Table 4 illustrates very clearly that a cable subscriber in effect “pays” in rental fees the equivalent of the full reference purchase price for their equipment in most cases in about a year.

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<sup>30</sup> *Id.* at 3



**Table 4: Consumer Equipment Cost Comparison**  
**DirecTV Receiver Purchase vs Monthly Cable Converter Rental**  
 (Number of months at monthly rate to meet equivalent purchase price)

DIRECTV	COMCAST	RCN	VERIZON
	Digital Adapter \$1.99	Digital Adapter No longer available	Digital Adapter \$3.99
	Analog Basic Only* \$3.45		
Standard Receiver \$69.00	Digital Converter* \$3.45 (20 months)	Digital Converter \$4.95 (18 months)	Digital Converter \$5.99 (12 months)
DVR Receiver \$99.00		DVR** \$17.95 (6 months)	
HD Receiver \$99.00	HD Converter* \$9.25^ (12 months)	HD Converter \$9.95 (10 months)	HD Converter \$9.99 (10 months)
HD DVR Receiver \$199.00		HD DVR Converter \$17.95 (14 months)	HD DVR Converter \$15.99 (13 months)
			MultiRoom DVR *** \$19.99
Not Required	CableCard \$9.25	CableCard \$1.50	CableCard \$3.99

\*Includes Comcast \$0.25 charge for remote control

\*\* No longer advertised on RCN website

\*\*\* Requires rental of additional Verizon converters

^Equipment rental price does not include monthly HD Technology Fee of \$9.25 required for HD service.

CableCard enables use of commercially available converter box, *i.e.*, "navigation device," for unidirectional cable service. (Electronic program guide, video-on-demand, and pay-per-view cannot be accessed.)

Source: Montgomery County Office of Cable and Communications, using Cable Rate Card Information as of June 28, 2011

Table 5 further shows that the equipment rental market is skewed to the benefit of the operator rather than the consumer. Should a piece of equipment be damaged, or not returned, a significant fee will be charged to the consumer. Without a retail market for the devices, it is impossible to know how much profit is built into this charge. Certainly the charges in Table 5 seem much higher than the reference prices for the satellite equipment listed in Table 4.

**Table 5 – 2011 Unreturned/Damaged Equipment Charges**

	CableCard	Digital Adapter	HD Converter	HD-DVR	SD-DVR	SD-STB
<b>Comcast</b>	Actual Replacement Cost					
<b>RCN*</b>	\$55		300.00 to 402.00 Depending on the model	370.00 to 550.00 Depending on the model		
<b>Verizon</b>	\$100	\$175	\$350	\$555	\$475	\$240

\*Plus taxes

Source: Montgomery County Office of Cable and Communications, using Cable Rate Card Information as of June 28, 2011

Moreover, these charges are fixed or require payment of the replacement cost. No consideration is given to the fact that the consumer may have already in effect paid for the equipment many times over in rental fees. Nor do they take into account that the equipment itself may have been in service for a number of years, with little useful life or value remaining. Thus, the operator is able to benefit in two ways from its captive rental market. A subscriber may pay many multiples of the cost of the equipment in rental fees over the years. And, should the equipment ever be damaged or unreturned, the subscriber pays for the replacement

equipment as well. Thus, the County strongly opposes NCTA's proposal that the Commission no longer needs to "create" a retail market for navigation devices.<sup>31</sup>

In light of the above, the *status quo* on equipment rentals is not benefiting consumers. Frankly, it is harmful. Thus, once again the County urges the Commission to take action to mandate a purchase option for equipment, or at a minimum state publicly that it supports such efforts by other jurisdictions.<sup>32</sup>

**IV. THE COMMISSION HAS OBLIGATIONS TO CONSUMERS AND CONGRESS THAT ARE NOT BEING MET THE COMMISSION SHOULD REEXAMINE AND REASSERT ITS ROLE REGARDING A RANGE OF SUBJECTS CRITICAL TO SUBSCRIBERS, BECAUSE THE MARKET WILL NOT ADDRESS THOSE MATTERS.**

As the Commission seeks information for only its 14th report to the Congress in this the 19th year since passage of the Cable Act amendments of 1992, it is clear that the Commission has failed in its obligation to provide annual competition reports to Congress<sup>33</sup>. Moreover, by providing a report based only on cable rate information voluntarily submitted by cable operators which is almost 3 years out-of-date by the time it is shared with Congress, it is clear that the Commission has not acted in a timely manner in meeting its cable rate reporting obligations.<sup>34</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> For a fuller discussion on this point see footnote 6.

<sup>33</sup> Section 628 (g) of the 1992 Act provides: "The Commission shall, beginning not later than 18 months after promulgation of the regulations required by subsection (c), annually report to Congress on the status of competition in the market for the delivery of video programming."

<sup>34</sup> Section 623 (k) of the 1992 Act provides "The Commission shall annually publish statistical reports on the average rates for basic cable service and other cable programming, and for converter boxes, remote control units, and other equipment, of-

(1) cable systems that the Commission has found are subject to effective competition..., compared with

Such delays by the Commission to act in a timely manner to meet its statutory deadlines is especially troubling considering the Commission has recently devoted significant resources to imposing “shot clocks” on local governments for cable franchising and tower siting, despite Congress limiting the authority of the Commission to regulate either.<sup>35</sup>

**A. There Remains a Need for Regulation and the Commission Must Find Ways to Ensure that Consumers Have a Voice in These Reports.**

NCTA (at 26) bubbles over in praise of the industry claiming that consumers can choose from “a multitude of video providers” and “a virtually unlimited array of programming” and, that competition in the marketplace is “flourishing” and “far exceeds anything that Congress could have envisioned” in 1992. It should come as no surprise then, that industry is urging the Commission not only to declare mission accomplished in this status report, but to remove all vestiges of industry regulation. In NCTA’s words “[i]t is time not only to report that the video marketplace is vibrantly competitive but also that those regulations intended to remedy a perceived lack of competition are no longer necessary or appropriate.”

The County not only rejects NCTA’s view, but calls on the Commission to make clear to Congress that the industry view reflects a distorted and self-serving perspective on the marketplace. Choice does not equate competition, if competition is meant to be a substitute for consumer protection in the cable industry.<sup>36</sup> The County would also suggest that the

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(2) cable systems that the Commission has found are not subject to such effective competition.

<sup>35</sup> It is also worth noting that the Commission has publicly admitted it “has more than three thousand open dockets” and that “many of these dockets have seen little or no activity in years.” *In the Matter of Amendment of Certain of the Commission’s Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, (GC Docket No. 10-44), Notice of Proposed Rulemaking rel. February 22, 2010 at ¶ 19.

<sup>36</sup> In exchange for higher rates, cable subscribers have more programming choices and advanced features such as DVR and video-on-demand options. But not all consumers want such options or to have to pay unrestrained rates for such services. Arguably, since little to no data was provided, increases in

Commission fill in gaps on matters ignored by industry by addressing a number of important issues that directly affect subscribers, and which the Commission has not kept adequately up-to-date. These issues are highlighted in the discussion below.

1. CableCARDS

The NOI and FNOI specifically request comment on issues related to the availability of navigation devices and CableCARDS.<sup>37</sup> Unfortunately, despite years of effort, the Commission has not been able to ensure that cable subscribers can purchase their own fully compatible set-top boxes. The County is pleased to note that on the same date these reply comments were due, the Commission's October 14, 2010 *Third Report and Order* on navigation devices was published in the Federal Register.<sup>38</sup> Publication of the Third Report and Order will benefit the small number of consumers who use CableCARD devices, but as the Commission is aware, CableCARD do not permit use of interactive features such as the electronic program guide, video-on-demand, or pay-per-view.

2. Customer Service Regulations

The County would also urge that the Commission examine how badly out of date its customer service rules are and how the Commission's inaction has undercut efforts by local franchising authorities to address the complaints of broadband Internet service and on-line video subscribers. Neither of these issues is raised by the NOI or FNOI.

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programming costs and terms of retransmission consent agreements are a key component of cable price increases. The County urges the Commission to specifically look at the high cost of sports programming and subscribers in ability to opt out of expensive national and regional sports programming such as ESPN and MASN.

<sup>37</sup> NOI at ¶¶ 83, 86. FNOI at ¶ 66. For a fuller analysis of this issue see 2009 Comments, at 21-22.

<sup>38</sup> 76 Fed Reg 40263 (July 8, 2011)

**B. The Commission's Customer Service Rule Is Outdated.**

The Commission's customer service rule took effect on July 1, 1993, and except for minor amendments in 1996 and 2000, has remained unchanged since.<sup>39</sup> The cable industry, however, has evolved dramatically since 1993 and the rule is now very much out of date – it does not address the kinds of problems that franchising authorities and subscribers typically face today. If national standards are necessary to avoid a proliferation of individual local standards, then it is essential for the Commission and the industry to keep those standards up to date.

In the County, the most common category of complaints received from subscribers concerns billing problems, as seen here:

**Table 6: Types of Complaints**

Fiscal Year	Billing	Internet Service	Reception	Other
2008	39.1%	24.3%	23.2%	13.4%
2009	39.9%	17.3%	22.8%	20.0%

In reality, however, the chief complaint of subscribers is that providers do not take their complaints seriously. This manifests itself in several ways:

- It takes too long for complaints to be resolved. Subscribers often report having to make multiple telephone calls before matters are resolved.
- Subscribers express frustration with the inability of cable companies to diagnose and correct problems in the first service call.
- Cable companies will only schedule service calls for a specific address; even when a subscriber has checked with neighbors and concluded that problem affects a broader area, customer service representatives have no authority to take further action.

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<sup>39</sup> 47 C.F.R. § 76.309.

- When complaints are “resolved,” many subscribers remain dissatisfied with the outcome.<sup>40</sup>

Consumer dissatisfaction with customer service in the industry is well known, yet the Commission’s rules say nothing about how effective or efficient an operator’s complaint resolution process should be. These are the issues that really matter: Why did the subscriber have to call in the first place? Was the complaint resolved in a single call? And did the subscriber agree that the matter was properly resolved?

Another problem that generates a great deal of subscriber frustration concerns promotional offers, a marketing practice which the industry points to as a mark of a “vibrant” marketplace.<sup>41</sup> For consumers, the experience is not so positive. Promotional offers are sometimes not well planned or executed.<sup>42</sup> But more often, consumers sign up for new service at a promotion rate and do not clearly understand the terms and conditions of the offer. The Commission’s rules do not require the cable operator to provide any information in writing and often subscribers are provided the promotional flyer as a substitute for a more adequate explanation of the offer. Subscribers often feel that companies or their customer service representatives are not held accountable for providing misleading or incorrect information at the point of sale. One possible solution would be for the Commission to develop a standard format and minimum content requirements for all offers made by providers, similar to the standard terms required to be disclosed in credit card promotional offers. If terms and conditions were

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<sup>40</sup> In both 2008 and 2009, over 20% of subscribers surveyed report that they were not satisfied with the resolution of specific complaints they raised with their providers.

<sup>41</sup> See discussion, *supra*.

<sup>42</sup> For instance, one well known incident was Verizon’s holiday offer of an HDTV set to new subscribers raised expectations that the set would be provided upon installation, when in fact subscribers had to go to a website to obtain shipment of the set. The company subsequently ran out of the promotional HDTV sets, the offer was replaced with a gift certificate.

fully and clearly disclosed, using the same format, subscribers would be better able to compare and evaluate offers.

The problems discussed above are not addressed at all by the Commission's rule. What's more, many of the issues that are addressed by the rule are no longer relevant to subscribers. For example, 47 C.F.R. § 76.309(c)(1) addresses telephone answering standards, but only in terms of the problems subscribers complained about in 1993, before the wide-spread use of large regional or national call centers. The rule requires company representatives to be available during normal business hours, permits after hours calls to be answered by an answering machine, requires the phone to be answered within thirty seconds, and specifies that customers may receive a busy signal no more than three percent of the time. Operators can and do easily meet these standards today by using any automatic response unit. But that has given rise to different problems for consumers. Customer complaints today have to do with cumbersome and confusing call answering menus, and the inability to reach live customer service representatives easily. Technology has advanced, but the Commission's rule has not.

Where there is not a convenient way to "comply" with outdated rules, operators "re-interpret" them to suit their business needs. For example, 47 C.F.R. § 76.309(c)(2) requires a cable operator to complete an initial installation within seven days of an order being placed. Verizon, however, does not always comply with this rule. Because Verizon's system requires installation of an optical network termination (ONT) device before cable service can be provided, Verizon insists on franchise standards that allow Verizon seven days to install the ONT, and then additional time – typically another seven days – to install cable service. Only if an ONT is already in place will Verizon comply with the rule's single seven-day standard. Many franchising authorities have reluctantly accepted Verizon's position on this point, because the



company is virtually uncompromising.<sup>43</sup> Thus, the original intent of the rule has been circumvented entirely.

47 C.F.R. § 76.309(c)(3) purports to address communications between cable operators and subscribers, but in fact it merely sets maximum time limits on when refunds and credits must be made. Subscribers are very much concerned with billing errors, and the process for their billing complaints to be resolved, but the Commission's rule is entirely silent on that point. As shown in Table 6, almost 40% of subscriber complaints concern billing. Cable operators often continue to bill even after an account has been disconnected, and automatic payments continue to be deducted from subscribers' bank accounts. Neither one of these problems is addressed by the current rule.

Furthermore, to the extent the rule does apply, it is honored only in the breach. Refunds take six to eight weeks to receive, and required credits are often not made. Operators routinely state that refunds must be issued by check cut from a separate corporate entity. In addition, subscribers who pay by automatic electronic debit often cannot receive refunds using the same automated process.

Finally, the Commission's standards only apply if expressly adopted by a community, and they include no enforcement mechanism. The existence of the standards allows operators to treat them as the default provision in any local franchise – “if they're good enough for the FCC they should be good enough for you” – but since they are largely ineffective, communities gain little by adopting them. The Cable Act and the Commission's rules permit more extensive local regulation, but the Commission has discouraged independent local action by permitting the costs

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<sup>43</sup> Two examples are the Montgomery County franchise, at Ex. D, § II(Y)(1), and the District of Columbia franchise, at Ex. D §3(B).

of stricter regulation to be passed through to subscribers.<sup>44</sup> The threat of passing on the cost of more effective regulation has been enough to convince some local franchising authorities not to insist on stricter requirements. The overall effect of the Commission's rules is that customer service in most communities is essentially unregulated.

The above discussion demonstrates that the Commission's current customer service rule is largely outdated and ineffective. Furthermore, the lack of effective rules is not being adequately remedied by market forces, despite the claims by some industry players that they are making improvements in response to competition.<sup>45</sup> Oligopolies are not generally concerned with delivering high levels of customer service, especially if improving service requires a significant increase in costs. Providing good customer service requires significant numbers of trained personnel to respond to individual complaints. The effect of ILEC entry into the video services market, however, has generally been to induce the cable industry to cut costs, and even before then, the entire trend in customer service had been to reduce costs by consolidating and centralizing customer service functions in regional call centers. In other words, the imperfectly competitive market that currently exists is not a substitute for regulation. Properly crafted rules, on the other hand, would offer subscribers a minimum level of protection and providers would be less tempted to cut corners.

Restated, effective federal regulation – or federal regulation that permits effective local regulation – would create an environment in which a certain acceptable level of customer service would be built into the system. If specific and effective standards were required by law, operators would find it much more difficult to justify cutting back in those areas, simply because

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<sup>44</sup> 47 C.F.R. §76.925(a)(3). This provision does not apply if a community is subject to effective competition – but many communities entered into franchise agreements when rate regulation was still in effect.

<sup>45</sup> See e.g. Comcast Comments at p. 18-19.

the failure to comply would be a violation of the law. This would also benefit operators in dealing with pressure from investors, since investment in meeting the standards could be justified in the same way.

The Commission should initiate a proceeding to reexamine the customer service rules and develop new standards that actually address current problems, and provide the flexibility to address new problems as they arise. Furthermore, such a proceeding should address the issue of customer service regulation in state franchising states. The Commission has always assumed that the local franchising authority would adopt and enforce customer service standards, and historically this has meant that local governments fulfilled that role. But the recent wave of state franchising statutes has eliminated the local role often without replacing it with a significant state role. Recent state franchising laws typically adopt the Commission's standards, and then eliminate or limit local authority to enforce them.<sup>46</sup> The net impact for consumers is the states have vitiated cable customer service regulation: they impose ineffective standards, while precluding local governments from adopting effective ones. Very few states have adopted standards of their own, or even given any consideration to this issue, in part because they rely on the existence of the Commission's rule. In addition, even if a state undertakes to enforce whatever standards might apply, the effectiveness of that effort will depend entirely on the resources devoted to the task.

Finally, the County notes that the Commission has the financial resources to perform its statutory reporting obligations and take other regulatory action to address the needs of cable subscribers. The Commission annually collects tens of millions of dollars in regulatory fees from cable television systems; fees that are passed through to and paid as additional line item charges

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<sup>46</sup> See, e.g., Fla. Stat. § 610.108; Tx. Util. Code § 66.008; N.C. G.S.A. 66-356(b).

by subscribers. In FY 2010, the per subscriber annual contribution was \$0.89, and for FY 2011 the rate is proposed to increase by 4.4% to \$0.93 per subscriber. That translates into close to \$60 million in regulatory fees paid by cable subscribers to the Commission annually.<sup>47</sup>

**C. The Commission Should Expressly Endorse Local Regulation of Internet Customer Service Issues.**

The Commission listed as one of its compelling reasons to reopen this proceeding the need to address “the growing importance of online video distribution (“OVD”) to consumers” (FNOI at ¶ 4). The County would suggest that until the Commission acts to protect consumers of Internet service, or in the alternative recognizes a local community’s ability to do so, the subscribers of OVD services will suffer the same challenges as traditional cable subscribers.

From the County’s perspective it appears that the Commission is not regulating Internet customer service, except on an *ad hoc* basis.<sup>48</sup> The states are not regulating Internet customer service. Montgomery County believes that Section 632 of the Communications Act permits the County to establish customer service standards pertaining to a cable operators’ Internet access service, because the statute, by its terms, is not limited to video service. This is logical because in fact Internet access subscribers face much the same kinds of problems as confront cable

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<sup>47</sup> The per subscriber fee is derived from dividing the Commission's prorated revenue requirement for cable television regulation by the number of "payment units", that is the Commission's estimate of the number of cable TV subscribers. The Commission determines the number of cable TV subscribers based on "publicly available data sources for estimated subscriber counts" and actual prior year payment units reported by operators. In calculating the FY 2011 per subscriber amount, the prorated revenue requirement used by the Commission was \$58,633,597 and the estimated subscriber count was 63,400,000; in FY 2010, the numbers were \$57,545,458 and 64,500,000, respectively. *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, MD Docket No. 10-87 Report and Order (FCC 10-123) (July 9, 2010); *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2011*, MD Docket No. 11-76, Notice of Proposed Rulemaking (FCC 11-68) (May 3, 2011).

<sup>48</sup> The Commission’s 2008 order on network management practices is an example of an *ad hoc* action. *Memorandum Opinion & Order*, 23 FCC Rcd. 13,028 (2008).

subscribers. Indeed, at one point the Commission had been referring subscribers who complained to the Commission regarding Internet service to their local franchising authorities. The Commission should formally adopt that position and allow local franchising authorities to address Internet service issues in the same fashion they address cable service complaints. From a consumer perspective, when they seek assistance from their local government to address a service problem, they expect that the local government will assist them regardless of whether video service is delivered from a cable or broadband provider. Consumers are frequently dismayed that local consumer protection for broadband service, is significantly weaker than protection for cable service, even though both services are provided by the same company.

Commission action is necessary because even though the statute can be construed to support local authority, franchising authorities have been wary of proceeding in the face of industry opposition. The industry's position, however is not entirely logical. Providers insist that they should not be required to obtain local franchises to provide Internet service, since they are using the same facilities they use to provide cable service – but by that logic local government should be permitted to handle resident complaints regarding Internet service. After all, the residents live in the local jurisdiction, the two services are provided by the same provider over the same plant, and Internet service is often bundled with cable service. It would be entirely logical to allow local governments to handle Internet customer, a.k.a OVD subscriber matters.

As shown on Table 6, 24.3% of complaints received by the Montgomery Office of Cable and Communications Services in Fiscal Year 2008 concerned Internet service. For the first three quarters of Fiscal Year 2009, 17.3% of complaints received had to do with Internet service. Consumers have problems, but only very limited recourse. With the roll out and acceptance of

OVD services, is it unreasonable to believe that these complaints will grow in number? The County urges the Commission to address this, on behalf of subscribers nationally.

**V. THERE WERE NO COMPLAINTS REGARDING LOCAL FRANCHISING**

Despite being prompted by the FNOI to do so<sup>49</sup>, not a single commenter complained about local franchising as the basis for limited competition or delayed entry.<sup>50</sup> The County hopes that the Commission will bear in mind this lack of complaints by the nation's leading residential broadband providers as it examines issues related to Broadband Acceleration efforts as part of its implementation of the National Broadband Plan.<sup>51</sup>

**VI. MONTGOMERY COUNTY WELCOMES NEW OPERATORS SUCH AS DIGITAL BROADCASTING OVS BUT REMINDS IT AND THE COMMISSION THAT OVS PROVIDERS HAVE IMPORTANT STATUTORY OBLIGATIONS.**

On May 26, 2011, Digital Broadcasting OVS ("Digital Broadcasting") filed an application for certification to operate an open video system pursuant to Section 653(a)(1) of the Communications Act of 1934 and the Commission's rules. Montgomery County was listed among the communities that Digital Broadcasting OVS planned to serve with its new service upon the obtaining of an OVS license. On June 3, 2011, the FCC denied Digital Broadcasting's

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<sup>49</sup> FNOI at ¶¶ 20, 21.

<sup>50</sup> While Verizon does not complain about local franchising, it does credit the Commission's prior actions on local franchising as the rationale for not needing to complain. The County would note that Verizon was not compelled to use any of the Commission's regulations in its negotiations with the County and is unaware of a single incident around the nation where Verizon placed a local community on the cable franchise shot clock. In fact, while not a public number, it is believed that Verizon has in excess of 1,000 local cable franchises. Were such a number accurate, it would appear that Verizon has been granted on average a new local franchise every business day for the last four years.

<sup>51</sup> *In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, (WC Docket No. 11-59) released April 7, 2011.

application finding “Digital Broadcasting ...failed to sufficiently and exhaustively indicate to the Commission the local communities it intends to serve and has failed to adequately serve a copy of its application on designated telecommunications officials in such local communities.”<sup>52</sup>

While the County welcomes all potential new entrants and new technologies, there are obligations under the Act and Commission rules with which these new entrants must comply. The County was therefore somewhat troubled that in its comments in the instant matter Digital Broadcasting requested clarification from the Commission as to what its obligations might be as a new technology OVS provider.<sup>53</sup> The County expects that the Commission, if it responds to the numerous questions posed by Digital Broadcast in its comments, will explain that while qualifying as an OVS provider does entitle the operator to the benefits of a streamlined regulatory process under Title VI, that streamlined process does not mean that there are no obligations.

In particular, the protections afforded Public, Education and Government (PEG) channels and support outlined in 47 CFR § 76.1505 (a) are important to the County. Digital Broadcasting must be prepared to demonstrate how it plans to satisfy these obligations, including support, channel capacity, in-kind services and resources. In addition, a discussion of Digital Broadcasting’s plans to meet its obligations with respect to fees in lieu of cable franchising fees, as described in 47 CFR § 76.1511, would also be helpful.

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<sup>52</sup> *In the Matter of Digital Broadcasting OVS Certification to Operate an Open Video System* Memorandum Opinion and Order (rel. June 3, 2011) at ¶ 3.

<sup>53</sup> Digital Broadcasting OVS Comments at 16.